

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

DAVID G. RAY, INDIVIDUALLY AND
ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED,

Plaintiff,

v.

TIERONE CORPORATION, GILBERT G.
LUNDSTROM, EUGENE B.
WITKOWICZ, MICHAEL J. FALBO,
AND CHARLES W. HOSKINS,

Defendants.

Case No. 8:10-cv-00199

**JOINT MOTION TO APPROVE
SCHEDULING AGREEMENT**

Pursuant to Fed. R. Civ. P. 7 and NE Civ. R. 7.3, the Plaintiffs and Defendants Lundstrom, Witkowicz, and Hoskins move the Court for an Order adopting the scheduling agreement outlined below. In support of this motion, these parties show the Court as follows:

1. The Complaint in the above-captioned action recently returned to this Court, after the Court accepted the recommendation of the Bankruptcy Court and entered a September 30, 2010 order withdrawing the reference to the Bankruptcy Court;
2. A group of Plaintiffs has filed a Motion for Appointment as Lead Plaintiff and Approval of Lead Plaintiff's Selection of Counsel in this action, which Motion remains pending (Doc. No. 21);
3. Plaintiffs and Plaintiffs' Counsel have indicated a desire to file an amended complaint after this Court rules on the pending Motion for Appointment as Lead Plaintiff; and
4. Counsel have appeared for Defendants Lundstrom, Witkowicz and Hoskins, and are desirous of clarifying whether those Defendants have any obligation to respond to the still pending Complaint;

5. In light of the foregoing, Plaintiffs and the appearing Defendants have agreed as follows:

- a. No Defendants need to answer or otherwise respond to the pending Complaint;
- b. At a date following this Court's ruling on the pending Motion for Appointment as Lead Plaintiff, the Lead Plaintiff will file an amended complaint;
- c. Following the appointment of Lead Plaintiff, counsel for Lead Plaintiff and counsel for Defendants will confer and agree upon an appropriate schedule that establishes dates for (i) the filing of an amended complaint; (ii) the filing of Defendants' answers or motion(s) to dismiss; and (iii) a briefing schedule for addressing the Defendants' motion(s) to dismiss, if any. The parties will jointly submit an agreed upon schedule to the Court within fourteen (14) days following the Court's entry of an order appointing Lead Plaintiff.

WHEREFORE, the undersigned parties respectfully request the Court enter an Order that no Defendant need answer or otherwise respond to the pending Complaint and that the parties shall submit, within 14 days after the entry of an order appointing Lead Plaintiff, a joint schedule containing dates for the filing of an amended complaint, for filing answers or motion(s) to dismiss, and a briefing schedule on any Defendants' motion(s) to dismiss the amended complaint.

Dated: October 7, 2010.

DAVID G. RAY, INDIVIDUALLY AND
ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED,

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CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of October 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to all CM/ECF participants and counsel of record.

By: David A. Yudelson